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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,557	11/28/2005	Bodo W. Lambertz	DD-25017	7025
7590 Olson & Cepuritis, Ltd. 36th Floor 20 North Wacker Drive Chicago, IL 60606				
			EXAMINER	
			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
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			03/24/2010 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,557

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Alissa L. Hoey

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/19/10 has been entered.

Claim Objections

2. Claims 1 and 21 are objected to because of the following informalities: it is unclear if "(in particular)" of claim 1 and "(as in claim 1)" of claim 21 are meant to be deleted by the parenthesis or are part of the claim, such that claim 21 is dependent upon claim 1. Appropriate correction is required.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the air channel located in the tread area in the sole along with the climate channel and central channel of claims 1 and 7 and claims 21-23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the climate channels extending from the central channel to the outside edge of the tread area and the air channel located in the tread are in the sole of the sock of claim 22 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1 and 7 and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the originally filed disclosure for the air channels being located on the sole of the sock along with the climate channels and central channel.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 1:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion (figure 1), the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (see figure 1, the side view of the sock provides the lowermost portion as the sole of the sock), an air channel (3: see portion of 3 at the lower most end of the sock in figure 1) extending from the shaft portion to the tread area in the sole of the sock (figure 1), at least one climate channel (ribbed portion on instep; column 2, lines 4-13) in the tread area (figure 1: see portion extending to the lower most end of the sock), communicating with the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 1).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (3, on opposite side of sock: column 1, lines 34-37) are is provided on the inside of the leg and/or on the outside of the leg of the sock, each air

channel being connected to at least one climate channel (ribbed portion) in the tread area (figure 1: ribbed portion extends to the sole of the sock on each side).

11. (Previously Presented) A sock according to Claim 1, characterized in that the sock is equipped with an X-cross bandage (9).

12. (Previously Presented) A sock according to Claim 1, characterized in that the sock has padding (5, 10, 11).

9. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figure 8: lowermost portion is the sole of the sock), an air channel (3) extending from the shaft portion to the tread area (figure 8), at least one climate channel (ribbed portion of the instep: column 2, lines 4-13) in the tread area, communicating with the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (14) are is provided on the inside of the leg and/or on the outside of the leg of the sock, each air channel being connected to at least one climate channel (ribbed portion of the instep) in the tread area (figure 8).

9. (Previously Presented) A sock according to Claim 2, characterized in that the air channel (3) is made of a climate-regulating mesh knit fabric (column 1, lines 26-37).

10. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figure 8), an air channel (14) extending from the shaft portion to the tread area (figure 8), at least one climate channel (3) in the tread area, communicating with the air channel (14) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

10. (Previously Presented) A sock according to Claim 1, characterized in that the climate channel (3) is made of climate-regulating mesh knit fabric (column 1, lines 26-37).

11. Claims 1-8, 12-17 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogden (US 5,708,985).

Ogden teaches the following:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a

tread area between the toe area and the heel area in the sole of the sock (figures 1-5), an air channel (22: first side of leg and top of portions 44) extending from the shaft portion to the tread area (figures 1-5), at least one climate channel (36 or portions of 44 extending from 50) in the tread area (figures 1-5), communicating with the air channel (22 and top portions of 44) for removing moisture from the tread area when the sock is worn for athletic activities (see figures 1-5).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (22: opposite side of leg and top of portions 44) is provided on the inside of the leg and/or on the outside of the leg of the sock (figures 1-5), each air channel (22: both sides of sock and top portions of 44) being connected to at least one climate channel (36 or portions of 44 extending from 50) in the tread area (see figures 1-5).

3. (Previously Presented) A sock according to Claim 1, characterized in that the climate channels (36 or portions extending from 50) have a curved shape in the tread area (figures 2, 3 and 5).

4. (Previously Presented) A sock according to claim 2, characterized in that the climate channels (36 or portions of 44 extending from 50) have a curved shape in the tread area (figures 2 and 3).

5. (Previously Presented) A sock according to Claim 1, characterized that the climate channels (36 or portions of 44 extending from 50) are partially tapered (figures 2, 3 and 5).

6. (Previously Presented) A sock according to Claim 1, characterized in that the

climate channels (36 or portion of 44 extending from 50) have an essentially circular cross section (figures 2, 3 and 5).

7. (Previously Presented) A sock according to Claim 1, characterized in that the climate channels (36 or portions of 44 extending from 50) are connected to one another through a central channel (central channel of 50 in figure 5).

8. (Previously Presented) A sock according to Claim 2, characterized in that air channels (22 and top portions of 44) and the climate channels (portions of 44 extending from 50) are made of the same material (column 3, lines 39-56).

12. (Previously Presented) A sock according to Claim 1, characterized in that the sock has padding (56, 18).

13. (Previously Presented) A sock according to Claim 2, characterized in that the climate channels (36 or portions of 44 extending from 50) are partially tapered (figures 1, 2 and 5).

14. (Previously Presented) A sock according to Claim 3, characterized in that the climate channels (36 or portions of 44 extending from 50) are partially tapered (figures 1, 2 and 5).

15. (Previously Presented) A sock according to Claim 2, characterized in that the climate channels (36 or portions of 44 extending from 50) have an essentially circular cross section (figures 1, 2 and 5).

16. (Previously Presented) A sock according to Claim 3, characterized in that the climate channels (36 or portions of 44 extending from 50) have an essentially circular cross section (figures 1, 2 and 5).

17. (Previously Presented) A sock according to Claim 5, characterized in that the climate channels (36 or portions of 44 extending from 50) have an essentially circular cross section (figures 1, 2 and 5).

21. (Currently Amended) A sock for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area a heel area, and a tread area between the toe area (figures 1-5) and the heel area in the sole of the sock, an air channel (22 and top portions of 44) extending from the shaft portion to the tread area (figures 1, 2 and 5), at least one climate channel (portions of 44 extending from 50) in the tread area (figures 1, 2 and 5), communicating with the air channel (22 and top portions of 44) for removing moisture from the tread area when the sock is worn for athletic activities and further including a plurality of climate channels (portion of 44 extending from 50) in the tread area (figure 5), the climate channels being connected to one another through a central channel (middle channel: 50) arranged along the longitudinal central axis of the tread area, the climate channels branching off from the central channel (figure 5).

22. (Previously Presented) A sock as in claim 21, wherein the climate channels (portions of 44 extending from 50) are curved and branch off on both sides of the central channel (middle channel: 50) and extend from the central channel to the outside edge of the tread area (figure 5).

23. (Previously Presented) A sock according to claim 22, wherein the climate channels have an essentially circular cross section (figure 5, identifiers 44).

Response to Arguments

12. Applicant's arguments filed 02/19/10 have been fully considered but they are not persuasive.

I) Applicant argues that Lambertz fails to teach the air channel extending on the sole portion of the sock.

Examiner notes that the bottom side of the sock of Lambertz as shown in figures 1 and 8, is the sole of the sock.

II) Applicant argues that Ogden fails to teach an air channel extending from the shaft of the sock and climate channels communicating with the air channels.

Examiner disagrees, since the portion of the sock (air channel: 22 and to portions of 44), extend from the shaft of the sole of the sock (see figures 1-3 and 5). The climate channels (portions of 44 extending from 50) are in communication with the air channel (see figures 1-3 and 5).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765